

THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

K.A. o/b/o her minor child, J.A.

Plaintiff

v.

ABINGTON HEIGHTS SCHOOL
DISTRICT, et al.

Defendants

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3:12-CV-2486
(JUDGE MARIANI)

ORDER

AND NOW, THIS 27th DAY OF JUNE 2014, upon consideration of Defendants' Motion to Dismiss Plaintiff's First Amended Complaint (Doc. 23) and all accompanying briefs, **IT IS HEREBY ORDERED THAT** the Defendants' motion is **GRANTED IN PART AND DENIED IN PART**; to wit:

1. Defendants' motion is **GRANTED** as to Count I of Plaintiff's Amended Complaint.

Specifically:

- a. Plaintiff's Fifth Amendment claim is **DISMISSED WITH PREJUDICE**.
- b. Plaintiff's Sixth Amendment claim is **MOOT**.
- c. Plaintiff's Fourteenth Amendment procedural due process claim is **DISMISSED WITHOUT PREJUDICE**. Should Plaintiff choose amend, she must state what procedural rights J.A. was deprived of, and the specific nature of the deprivation(s).

d. Plaintiff's Fourteenth Amendment substantive due process claim is

DISMISSED WITH PREJUDICE.

2. Defendants' motion is **GRANTED** as to Count II of Plaintiff's Amended Complaint.

The claim for Intentional Infliction of Emotional Distress is **DISMISSED WITH PREJUDICE.**

3. Defendants' motion is **GRANTED IN PART AND DENIED IN PART** as to Count III of Plaintiff's Amended Complaint. Specifically:

a. Plaintiff's claim for Breach of Fiduciary Duty is **DISMISSED WITH PREJUDICE** with respect to Abington Heights School District.

b. Plaintiff's claim for Breach of Fiduciary Duty is **DISMISSED WITHOUT PREJUDICE** with respect to Defendants Mahon and Quinn.

c. Defendants' motion to dismiss Plaintiff's claim for Breach of Fiduciary Duty is **DENIED** with respect to Defendants Elia, Antonetti, and Kelly.

4. Defendants' motion is **GRANTED IN PART AND DENIED IN PART** as to Count IV of Plaintiff's Amended Complaint. Specifically:

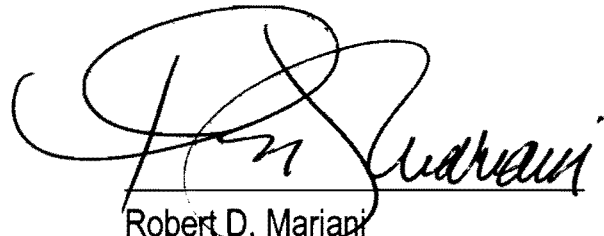
a. Plaintiff's claim for Punitive Damages is **DISMISSED WITH PREJUDICE** with respect to Abington Heights School District.

b. Plaintiff's claim for Punitive Damages is **DISMISSED WITHOUT PREJUDICE** with respect to Defendants Mahon and Quinn.

- c. Defendants' motion to dismiss Plaintiff's claim for Punitive Damages is **DENIED** with respect to Defendants Elia, Antonetti, and Kelly. Plaintiff may bring a claim for Punitive Damages for the causes of action that we have allowed to remain or dismissed without prejudice.
5. Defendants' motion is **GRANTED** as to Count V of Plaintiff's Amended Complaint. The claim for Negligence is **DISMISSED WITH PREJUDICE**.
6. Defendants' motion is **GRANTED** as to Count VI of Plaintiff's Amended Complaint. Specifically:
- a. Plaintiff's Section 504 of the Federal Rehabilitation Act claim is **DISMISSED WITH PREJUDICE** with respect to Defendants Mahon, Quinn, Elia, Antonetti, and Kelly.
- b. Plaintiff's Section 504 of the Federal Rehabilitation Act claim is **DISMISSED WITHOUT PREJUDICE** with respect to Abington Heights School District. Should Plaintiff choose to amend, she must sufficiently allege that (1) J.A. was disabled pursuant to Section 504 in February, 2011; (2) the manner in which he was expelled was based on his disability; (3) he was treated differently in the hearing due to his disability; and (3) the school officials' actual decision to expel him was due to his disability.
7. Defendants' motion is **GRANTED** as to Count VII of Plaintiff's Amended Complaint. Plaintiff's Civil Rights claim is **DISMISSED WITH PREJUDICE**.

8. Plaintiff is **HEREBY GRANTED 14 days from the date of this Order** to file a Second Amended Complaint as to those Counts where leave to do so has been granted.

ACCORDINGLY, the only Counts remaining are Count III (Breach of Fiduciary Duty), Count IV (Punitive Damages), Count I, with respect to the Fourteenth Amendment procedural due process claim, as to which Plaintiff is granted leave to amend against all Defendants, and Count VI (Section 504 of the Federal Rehabilitation Act) as to which Plaintiff is granted leave to amend with respect to Abington Heights School District.



Robert D. Mariani
United States District Court Judge